

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

REBECCA FAY WALSH,

Plaintiff,

- against -

VIACOM INTERNATIONAL INC.

Defendant.

Docket No. 1:19-cv-00126

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Rebecca Fay Walsh (“Walsh” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Viacom International Inc. (“Viacom” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of rapper and songwriter Cardi B at the Tom Ford Fashion Show, owned and registered by Walsh, a New York based professional photographer. Accordingly, Walsh seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Walsh is a professional photographer in the business of licensing her photographs to online and print media for a fee having a usual place of business at 85 N. 3<sup>rd</sup> Street, Apt. 604, Brooklyn, New York 11249.

6. Upon information and belief, Viacom is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business 1515 Broadway, New York, New York 10036. Upon information and belief Viacom is registered with the New York Department of State Division of Corporations to do business in the State of New York. At all times material, hereto, Viacom has owned and operated websites at the URL's: www.VH1.com (the "VH1 Website") and www.BET.com (the "BET Website" and together the VH1 Website "the Websites").

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff's Ownership of the Photograph**

7. Walsh photographed rapper and songwriter Cardi B at the Tom Ford Fashion Show (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Walsh is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-129-105.

#### **B. Defendant's Infringing Activities**

10. On or about September 10, 2018, Viacom ran an article on the VH1 Website entitled *If Y'all Though Cardi B Was Going to Lose Respect, You're Wrong, Just Ask Tom Ford*. See URL: <http://www.vh1.com/news/366364/cardi-b-tom-ford-lipstick/>. The article featured the Photograph. A true and correct copy of the article and a screenshot of the Photograph on the article are attached hereto as Exhibit B.

11. On or about September 10, 2018, Viacom ran an article on the BET Website entitled *Kiss, Kiss: 11 Hours After Cardi B's Tom Ford Lipstick Shade Was Announced it Sold Out*. See URL: [https://www.bet.com/style/beauty/2018/09/10/cardi-b\\_s-tom-ford-lipstick-sold-out-in-minutes.html](https://www.bet.com/style/beauty/2018/09/10/cardi-b_s-tom-ford-lipstick-sold-out-in-minutes.html). A true and correct copy of the article and a screenshot of the Photograph on the article are attached hereto as Exhibit C.

12. Viacom did not license the Photograph from Plaintiff for its articles, nor did Viacom have Plaintiff's permission or consent to publish the Photograph on its Websites.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)**  
**(17 U.S.C. §§ 106, 501)**

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Viacom infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Websites. Viacom is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to her attorney's fees and full costs pursuant to 17 U.S.C. § 505.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Viacom be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded her costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and

6. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
January 6, 2019

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